

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

DENIS DEMACEDO,
Plaintiff,

v.

CRAIG KOENIG,
Defendant.

Case No. 19-cv-05815-LB

ORDER TO SHOW CAUSE

Re: ECF No. 1

INTRODUCTION

Denis Demacedo, an inmate at the Correctional Training Facility in Soledad, filed this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ He consented to proceed before a magistrate judge.² His petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.³ This order requires the respondent to respond to the petition.

¹ Pet. – ECF No. 1. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Consent – ECF No. 3.

³ The court discovered the petition only now and apologizes for the delay.

1 **STATEMENT**

2 Following his involvement in an automobile accident that caused the death of three people and
 3 the injury of a fourth, a jury in San Mateo County Superior Court convicted Mr. Demacedo on
 4 November 24, 2015 of (1) second-degree murder, (2) gross vehicular manslaughter while
 5 intoxicated, (3) driving under the influence of alcohol and causing injury, (4) driving with a blood-
 6 alcohol content of .08 or higher and causing injury, (5) perjury, and (6) hit and run.⁴ Overall, the
 7 court sentenced Mr. Demacedo to prison terms of 47 years and two months to life in prison (with
 8 varying sentences imposed for the underlying counts of conviction).⁵

9 Mr. Demacedo appealed his conviction, the California Court of Appeal affirmed, and the
 10 California Supreme Court denied his petition for review.⁶ He then filed this habeas petition.

11 **ANALYSIS**

12 This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody
 13 pursuant to the judgment of a State court only on the ground that he is in custody in violation of
 14 the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*,
 15 423 U.S. 19, 21 (1975). A district court considering an application for a writ of habeas corpus
 16 shall “award the writ or issue an order directing the respondent to show cause why the writ should
 17 not be granted, unless it appears from the application that the applicant or person detained is not
 18 entitled thereto.” 28 U.S.C. § 2243.

19 Mr. Demacedo alleges that the state court proceedings violated his rights under the Sixth,
 20 Eighth, and Fourteenth Amendments.⁷ Upon review of his petition, the court cannot say that his
 21 claims are patently without merit. The respondents must respond to those claims.
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 26 ⁴ Pet. – ECF No. 1 at 10–15 (¶¶ 1–2, 8–27).

27 ⁵ *Id.* at 11 (¶ 3).

28 ⁶ *Id.* (¶¶ 4–6).

⁷ *Id.* at 24–25 (¶¶ 68–72).

CONCLUSION

For the foregoing reasons,

1. The petition warrants a response.

2. The clerk must serve by mail a copy of this order and the petition upon the respondent and the respondent's attorney, the Attorney General of the State of California and include a copy of the "consent or declination to magistrate judge jurisdiction" form.

3. The clerk must electronically serve a copy of this order upon the respondent and the respondent's attorney, the Attorney General of the State of California, at the following email address: SFAWTParalegals@doj.ca.gov. The petition and any exhibits thereto are available via the Electronic Case Filing (ECF) system for the Northern District of California.

5. The respondent must file and serve upon the petitioner, on or before **September 28, 2020**, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. The respondent must file with the answer a copy of all portions of the court proceedings that have been previously transcribed and that are relevant to a determination of the issues presented by the petitioner.

6. If the petitioner wishes to respond to the answer, he must do so by filing a traverse with the court and serving it on the respondent on or before **October 28, 2020**.

IT IS SO ORDERED.

Dated: July 28, 2020



LAUREL BEELER
United States Magistrate Judge